

**Remarks**

This Application has been carefully reviewed in light of the Office Action mailed December 21, 2006. Applicant appreciates the Examiner's consideration of the Application. Applicant has made clarifying amendments to Claim 1. None of these amendments are considered narrowing or necessary for patentability. Additionally, none of these amendments are made in relation to any rejection raised by the Examiner. Applicant believes all claims are allowable over the Examiner's rejections without amendment and respectfully provides the following remarks. Applicant respectfully requests reconsideration and allowance of all pending claims.

**I. Objections to the Drawings and Specification**

Applicant attaches to this Response Replacement Sheets and Annotated Sheets for FIGURES 1-3. The amendments to FIGURES 2-3 amend these figures to include language consistent with the language used in Applicant's Specification. The Replacement Sheet for FIGURE 1 includes substantively the same content as the drawings filed with the patent application, but has been prepared by Applicant's draftsman (as have all of the Replacement Sheets). Thus, the Annotated Sheet for FIGURE 1 does not include any mark-ups since there are no amendments to that figure. Applicant respectfully requests approval and entry of the replacement drawings. Additionally, Applicant respectfully requests that the Examiner withdraw the objections to the drawings and the Specification.

**II. The Claims are Allowable over the Proposed Sockut-Barry Combination**

The Examiner rejects Claims 1-4 and 12-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,721,915 to Sockut et al. ("*Sockut*") and U.S. Patent 5,517,641 to Barry, et al. ("*Barry*"). Applicant respectfully traverses these rejections. Applicant addresses each of independent Claims 1, 12, and 17.

**A. Independent Claim 1**

**1. The Proposed Sockut-Barry Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 1**

"To establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art." M.P.E.P. § 2143.03 (emphasis

added); *see also In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). “*All words* in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. 2143.03 (emphasis added); *see also In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

At a minimum, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest the database table recovery system recited in Claim 1 that is operable to:

- retrieve a backup copy of a tablespace;
- apply updates to the backup copy from a log associated with a database table; and
- restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace.

As allegedly disclosing these limitations, the Examiner relies on various portions of *Sockut*. (See Office Action, Pages 3-4) Applicant respectfully disagrees that *Sockut* (whether considered alone or in combination with *Barry*) discloses, teaches, or suggests these limitations.

*Sockut* discloses online reorganization of a database, and particularly the interaction between the application of a log and maintenance of a table that maps record identifiers (RIDs) during online reorganization of the database. (*Sockut*, 1:12-16) The Examiner cites column 9, lines 19-22, which mentions the phrase “a backup copy of the new table space.” Applicant assumes the Examiner is equating this disclosure in *Sockut* with the backup tablespace recited in Claim 1. Applicant will assume for the sake of argument only (and not by way of concession or agreement) that the Examiner’s proposed equation is possible.

It appears to Applicant that the Examiner merely located the terms backup and table space in *Sockut*, but that the other disclosures in *Sockut* that the Examiner apparently equates with the other limitations in Claim 1 (some of which reference *the backup copy of the tablespace*) do not relate to this disclosure of the purported backup copy in *Sockut*. For example, the cited disclosure of the backup copy of the new table space in *Sockut* appears in a description of a method. (See *Sockut*, 7:50-9:62) However, nowhere does this series of steps appear to disclose, teach, or suggest a database table recovery system that is operable to “retrieve a backup copy of a tablespace,” “apply updates to the backup copy from a log

associated with a database table,” and “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1.

Moreover, nowhere do the cited portions appear to disclose, teach, or suggest a database table recovery system that is operable to “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1. It is not entirely clear which particular portion of *Sockut* the Examiner relies upon as allegedly disclosing this particular limitation of Claim 1. In any event, one cited portion of *Sockut* merely discloses reorganization of a database. (*Sockut*, 1:21-22) According to another cited portion relating to a reorganization strategy called fuzzy reorganization, a reorganizer records a current relative byte address of a log (which, according to *Sockut*, is a sequence of entries in a file (a region of storage) recording the changes that occur in a database). (See *Sockut*, 1:63-2:6; Office Action, Page 3) According to *Sockut*, the reorganization copies data from an old (original) area for the table space to a new area for the table space in reorganized form. Concurrently, users can use the DBMS’s normal facilities to read and write the old area, and the DBMS uses its normal facilities to record the writing in a log. (*Sockut*, 2:6-11; Office Action, Page 3) The reorganizer then reads the log and applies it to the new area to bring the new area up to date. (*Sockut*, 2:11-12) However, nowhere do these cited portions disclose, teach, or suggest a database table recovery system that is operable to “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1.

The Examiner also cites column 3, line 61 through column 4, line 17 of *Sockut*. These cited portions appear to disclose how updates made during a reorganization of a database are applied to the reorganized database. However, nowhere does this cited portion appear to disclose, teach, or suggest a database table recovery system that is operable to “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1.

The Examiner acknowledges that *Sockut* fails to teach “a tablespace access system coupled to the table recovery system, the tablespace access system is operable to restrict access to the tablespace to read-only access,” as recited in Claim 1. (See Office Action, Page 4) However, the Examiner argues that *Barry* teaches these limitations.

Whether or not the cited portions of *Barry* disclose, teach, or suggest “a tablespace access system coupled to the table recovery system, [wherein] the tablespace access system is operable to restrict access to the tablespace to read-only access,” as argued by the Examiner (and Applicant does not concede that *Barry* does disclose, teach, or suggest this element of Claim 1), Applicant demonstrates below that the Examiner has not provided the requisite teaching, suggestion, or motivation either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention to combine these references in the manner the Examiner proposes.

For at least these reasons, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1. Independent Claim 1 is allowable for at least this reason.

## **2. The Proposed *Sockut-Barry* Combination is Improper**

Applicant respectfully submits that the Examiner has not provided the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention to modify or combine *Sockut* with *Barry* in the manner the Examiner proposes. Applicant’s claims are allowable for at least this additional reason.

### **i. The Legal Standard**

The question raised under 35 U.S.C. § 103 is whether the references taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the references

why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. It is clear based at least on the many distinctions discussed above that the proposed *Sockut-Barry* combination does not, taken as a whole, suggest the claimed invention, taken as a whole. Applicant respectfully submits that the Examiner has merely pieced together disjointed portions of references, with the benefit of hindsight using Applicant's claims as a blueprint, in an attempt to reconstruct Applicant's claims.

The governing Federal Circuit case law makes this strict legal standard clear.<sup>1</sup> According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* ***Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so."*** *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432 (emphasis added). *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (***holding a prima facie case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine***); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try

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<sup>1</sup> Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "*The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.*" M.P.E.P. § 2142 (emphasis added). The governing Federal Circuit cases are equally clear. "A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one 'to fall victim to the insidious effect of a hindsight syndrome *wherein that which only the invention taught is used against its teacher.*'" *In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted; emphasis added). In *In re Kotzab*, the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id.* *See also, e.g., Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board, *explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:*

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references*. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted; emphasis added).

**ii. The Analysis**

The Examiner states:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a tablespace access system coupled to the table recovery system, [wherein] the tablespace access system is operable to restrict access to the tablespace to read-only access and in view of Sockut's teachings in col. 8, lines 57-67, col. 9, lines 1-18 and lines 37-44 of database performance and to modify in Sockut because such a modification would allow Sockut's system to have independent recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file.

(Office Action, Page 4)

Applicant respectfully submits that the Examiner has not provided any support for the proposed teaching, suggestion, or motivation that "such a modification would allow Sockut's system to have independent recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file." It appears that the Examiner has merely argued that one of ordinary skill in the art at the time the invention was made *could have* modified *Sockut* to perform the acknowledged deficient limitations (a point which Applicant does not concede). However, it does not appear to Applicant that the Examiner has pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to actually incorporate "a tablespace access system coupled to the table recovery system, [] the tablespace access system [being] operable to restrict access to the tablespace to read-only access," as recited in Claim 1, into the particular techniques disclosed in *Sockut* (*without using Applicant's claims as a guide for doing so*). See M.P.E.P. § 2143.01(III) (stating that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination); *see also In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). In other words, the statements made by the Examiner does not provide a supported explanation as to: (1) why it

would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify *Sockut* in the manner proposed by the Examiner; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so.

There is certainly no reason to assume that one of ordinary skill in the art at the time of Applicant's invention would have been motivated to combine *Sockut* with *Barry* in the manner the Examiner proposes. Therefore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, combine *Sockut* with *Barry* in the manner proposed by the Examiner.<sup>2</sup> Applicant respectfully submits that the Examiner's attempt to combine *Sockut* with *Barry* appears to constitute the type of impermissible hindsight reconstruction of Applicant's claims, using Applicant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the Examiner has not demonstrated the required teaching, suggestion, or motivation to combine *Sockut* and *Barry* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

For at least these reasons, Applicant respectfully submits that the proposed *Reitburg-Ryan* combination is improper. Independent Claim 1 and its dependent claims are allowable for at least this additional reason.

### 3. Conclusions with Respect to Claim 1

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry*

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<sup>2</sup> If "common knowledge" or "well known" art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.



combination with respect to independent Claim 1. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims.

**B. Independent Claim 12**

**1. The Proposed *Sockut-Barry* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Independent Claim 12**

Applicants respectfully submit that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest at least the following limitations recited in Claim 17:

- reading log records associated with a first database table of the one or more database tables;
- applying the log records to the backup copy without recovering the tablespace;
- building new table data pages from the backup copy;
- scanning the new table data pages for records of the first database table;
- and
- updating the first database table from the records.

For example, it appears that the Examiner acknowledges that *Sockut* does not teach an entire element of Claim 12 (“reading log records associated with a first database table of the one or more database tables [of the tablespace]”), but the Examiner concludes that it would have been obvious to modify *Sockut* to include this element of Claim 12. (See Office Action, Page 5) Applicant notes that in the rejection of Claim 12, the Examiner does not reference *Barry* as purportedly making up for this deficiency of *Sockut*, nor does the Examiner cite *Barry* as providing a purported teaching, suggestion, or motivation for modifying *Sockut* in the manner proposed by the Examiner. (See Office Action, Page 5)<sup>3</sup> For at least those reasons discussed below in Section II.B.2, Applicant respectfully submits that the Examiner’s proposed modifications to *Sockut* are improper.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “applying the log records to the backup copy without recovering the tablespace,”

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<sup>3</sup> In fact, it is not entirely clear whether the rejection of Claim 12 (and various other claims, such as independent Claim 17) is based at all on *Barry* or is an obviousness rejection based solely on *Sockut*.

as recited in Claim 12. At least because the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “reading *log records associated with a first database table* of the one or more database tables,” as recited in Claim 12 and as acknowledged by the Examiner, the proposed *Sockut-Barry* combination necessarily fails to disclose, teach, or suggest “applying *the log records* to the backup copy without recovering the tablespace,” as recited in Claim 12.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “building new table data pages from the backup copy,” as recited in Claim 12. As allegedly disclosing these limitations, the Examiner cites the following statement from *Sockut*: If the log entry is an update from pointer to regular data record then proceed as follows. (See Office Action, Page 5, citing, *Sockut* 14:66-67) However, nowhere does this statement disclose, teach, or suggest “building new table data pages from the backup copy;” as recited in Claim 12. Indeed the statement does not even mention building anything, let alone building new table data pages from the backup copy (of the tablespace), as recited in Claim 12.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “scanning the new table data pages for records of the first database table,” as recited in Claim 12. As allegedly disclosing these limitations, the Examiner cites column 11, lines 52-66 of *Sockut*. While the cited portion of *Sockut* mentions the words “scan” or “scanning,” nowhere does the cited portion appear to disclose, teach, or suggest “scanning *the new table data pages for records of the first database table*,” as recited in Claim 12. In particular, Applicant respectfully asks the Examiner where in this cited portion does *Sockut* disclose the new table data pages and that such new table data pages are scanned (and particularly that they are scanned for records of the first database table)?

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “updating the first database table from the records,” as recited in Claim 12. First, at least because the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “scanning the new table data pages for records of the first database table,” as recited in Claim

12, the proposed *Sockut-Barry* combination necessarily fails to disclose, teach, or suggest “updating the first database table from *the records [records of the first database table for which the new table data pages were scanned]*,” as recited in Claim 12.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 12. Independent Claim 12 and its dependent claims are allowable for at least this reason.

## **2. The Proposed Modifications to *Sockut* are Improper**

Applicant respectfully submits that the Examiner has not demonstrated the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of the invention for modifying *Sockut* in the manner proposed by the Examiner. Applicant reiterates the above-discussed heavy burden incumbent on the Examiner for demonstrating a *prima facie* case of obviousness.

With respect to the rejection of Claim 12 and the proposed modification of *Sockut*, the Examiner states:

Sockut failed to teach reading log records associated with a first database table in the one or more database tables, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to read log records associated with a first table in the one or more tables and to modify in *Sockut* because such a modification would allow the data to be read and updated in the first table before it is copied to the new table/tables and a backup copy is made of the data pages.

(Office Action, Page 5)

Applicant respectfully submits that the Examiner has not provided any support for this proposed modification to *Sockut* or for the proposed teaching, suggestion, or motivation for making this modification. It appears that the Examiner has merely argued that one of ordinary skill in the art at the time the invention was made *could have* modified *Sockut* to perform the acknowledged deficient limitations (a point which Applicant does not concede).

However, it does not appear to Applicant that the Examiner has pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to actually incorporate “reading log records associated with a first database table in the one or more database tables,” as recited in Claim 12, into the particular techniques disclosed in *Sockut* (*without using Applicant’s claims as a guide for doing so*). See M.P.E.P. § 2143.01(III) (stating that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination); *see also In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). In other words, the statements made by the Examiner does not provide a supported explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify *Sockut* to incorporate “reading log records associated with a first database table in the one or more database tables,” as recited in Claim 1; and (2) how one of ordinary skill in the art at the time of Applicant’s invention would have actually done so.

There is certainly no reason to assume that one of ordinary skill in the art at the time of Applicant’s invention would have been motivated to make the proposed modifications to *Sockut*. Therefore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify *Sockut* in the manner proposed by the Examiner.<sup>4</sup> Applicant respectfully submits that the Examiner’s attempt to modify *Sockut* appears to constitute the type of impermissible hindsight reconstruction of Applicant’s claims, using Applicant’s claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the Examiner has not demonstrated the required teaching, suggestion, or motivation to modify or combine *Sockut* and *Barry* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner’s conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing

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<sup>4</sup> If “common knowledge” or “well known” art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination is improper. Independent Claim 12 and its dependent claims are allowable for at least this additional reason.

### **3. Conclusions with Respect to Claim 12**

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry* combination with respect to independent Claim 12. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 12 and its dependent claims.

#### **C. Independent Claim 17**

##### **1. The Proposed *Sockut-Barry* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Independent Claim 17**

Applicant notes that in rejecting Claim 17, the Examiner references the rejection of Claim 12. (*See* Office Action, Page 7) Thus, Applicants cite and reference the Examiner's rejection of Claim 12.

Applicants respectfully submit that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest at least the following limitations recited in Claim 17:

- reading log records associated with a first database table of the one or more database tables;
- applying the log records to the backup copy without recovering the tablespace;
- building one or more table data pages from the backup copy having the log records applied;
- selecting one or more records from the one or more database table data pages, the one or more records belonging to the first database table; and
- updating the first database table with the one or more records selected from the one or more table data pages, while allowing access to the rest of the one or more database tables in the tablespace,

- wherein the first database table can be recovered without having to recover the tablespace.

For example, for at least certain reasons analogous to those discussed above with reference to independent Claim 12, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “reading log records associated with a first database table of the one or more database tables,” “applying the log records to the backup copy without recovering the tablespace,” “building one or more table data pages from the backup copy having the log records applied,” “selecting one or more records from the one or more database table data pages, the one or more records belonging to the first database table,” and “updating the first database table with the one or more records selected from the one or more table data pages, while allowing access to the rest of the one or more database tables in the tablespace,” as recited in Claim 17.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “wherein the first database table can be recovered without having to recover the tablespace,” as recited in Claim 17. Given that the Examiner simply referenced the rejection of Claim 12 when rejecting Claim 17, it is not entirely clear what particular portion of *Sockut* or *Barry* the Examiner believes allegedly disclose this limitation of Claim 17. However, Applicant respectfully submits that none of the cited portions appear to disclose, teach, or suggest this limitation of Claim 17.

The Examiner acknowledges that *Sockut* does not teach an entire element of Claim 17, but the Examiner concludes that it would have been obvious to modify *Sockut* to include this element of Claim 12. (See Office Action, Page 5) Applicant notes that in the rejection of Claim 12 (and thus Claim 17), the Examiner does not reference *Barry* as purportedly making up for this deficiency of *Sockut*, nor does the Examiner cite *Barry* as providing a purported teaching, suggestion, or motivation for modifying *Sockut* in the manner proposed by the Examiner. (See Office Action, Page 5) For at least those reasons discussed below in Section II.C.2, Applicant respectfully submits that the Examiner’s proposed modifications to *Sockut* are improper.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 17. Independent Claim 17 and its dependent claims are allowable for at least this reason.

**2. The Proposed Modifications to *Sockut* are Improper**

For at least those reasons discussed above in Section II.B.2, Applicant respectfully submits that the Examiner has not demonstrated the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of the invention for modifying *Sockut* in the manner proposed by the Examiner. Applicant reiterates the above-discussed heavy burden incumbent on the Examiner for demonstrating a *prima facie* case of obviousness. For at least these reasons, Applicant respectfully submits that the proposed modifications to *Sockut* combination is improper. Independent Claim 17 and its dependent claims are allowable for at least this additional reason.

**3. Conclusions with Respect to Claim 17**

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry* combination with respect to independent Claim 17. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 17 and its dependent claims.

**III. Allowable Subject Matter**

Applicant notes with appreciation the allowance of Claims 5 and 6. Applicant respectfully issues a statement commenting on the Examiner's statement of reasons for allowance of Claims 5 and 6 pursuant to 37 C.F.R. § 1.104. Applicant respectfully disagrees with the Examiner's reasons for allowance to the extent that they are inconsistent with applicable case law, statutes, and regulations. Furthermore, Applicant does not admit to any characterization or limitation of the claims by the Examiner, particularly any that are

inconsistent with the language of the claims considered in their entirety and including all of their constituent limitations, or to any characterization of a reference by the Examiner.

**IV. No Waiver**

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.



**Conclusion**

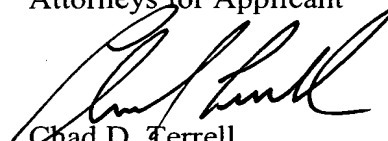
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicant



Chad D. Terrell  
Reg. No. 52,279

Date: March 21, 2007

Customer No. **05073**



ANNOTATED MARKED-UP  
DRAWING

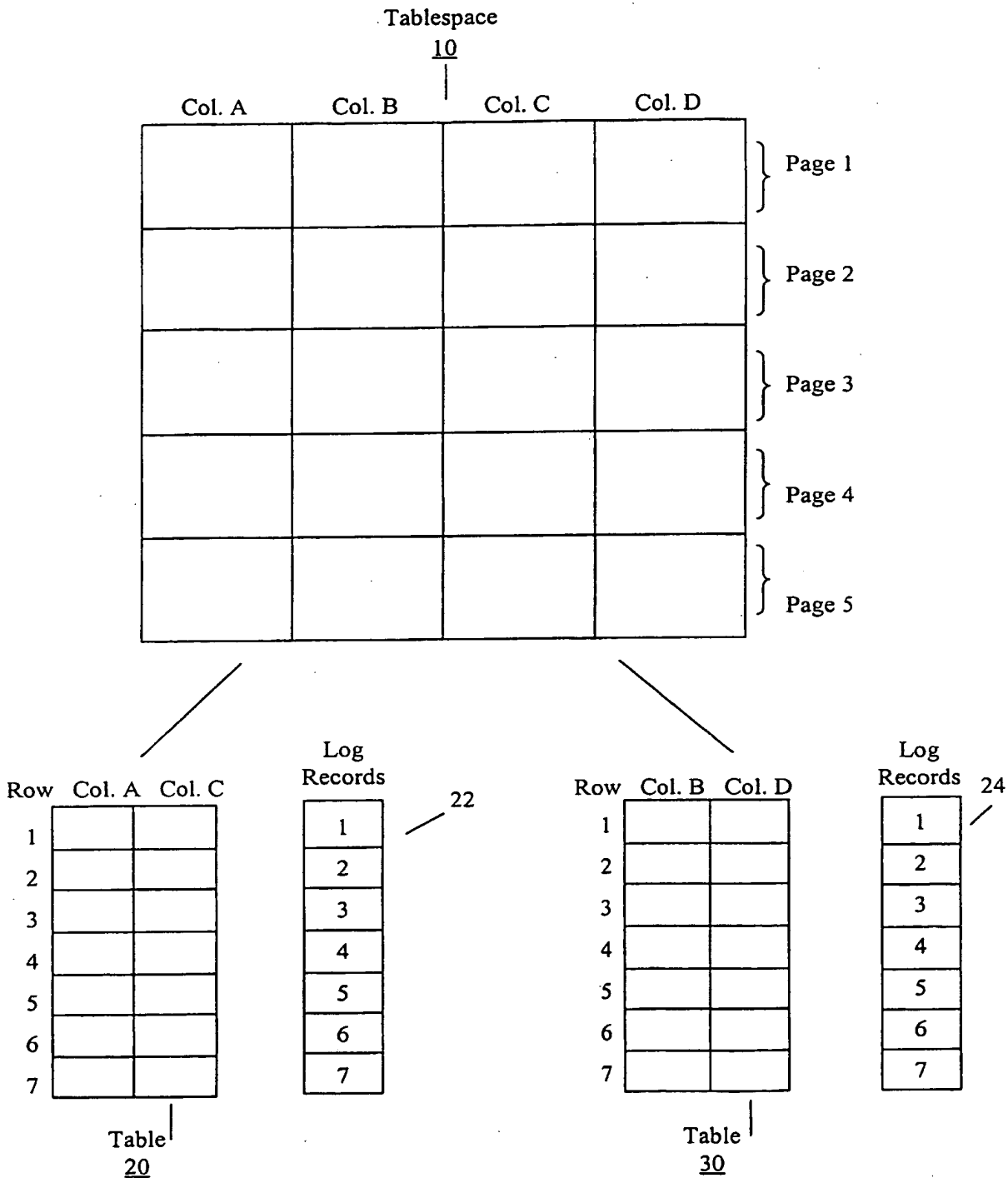


Fig. 1

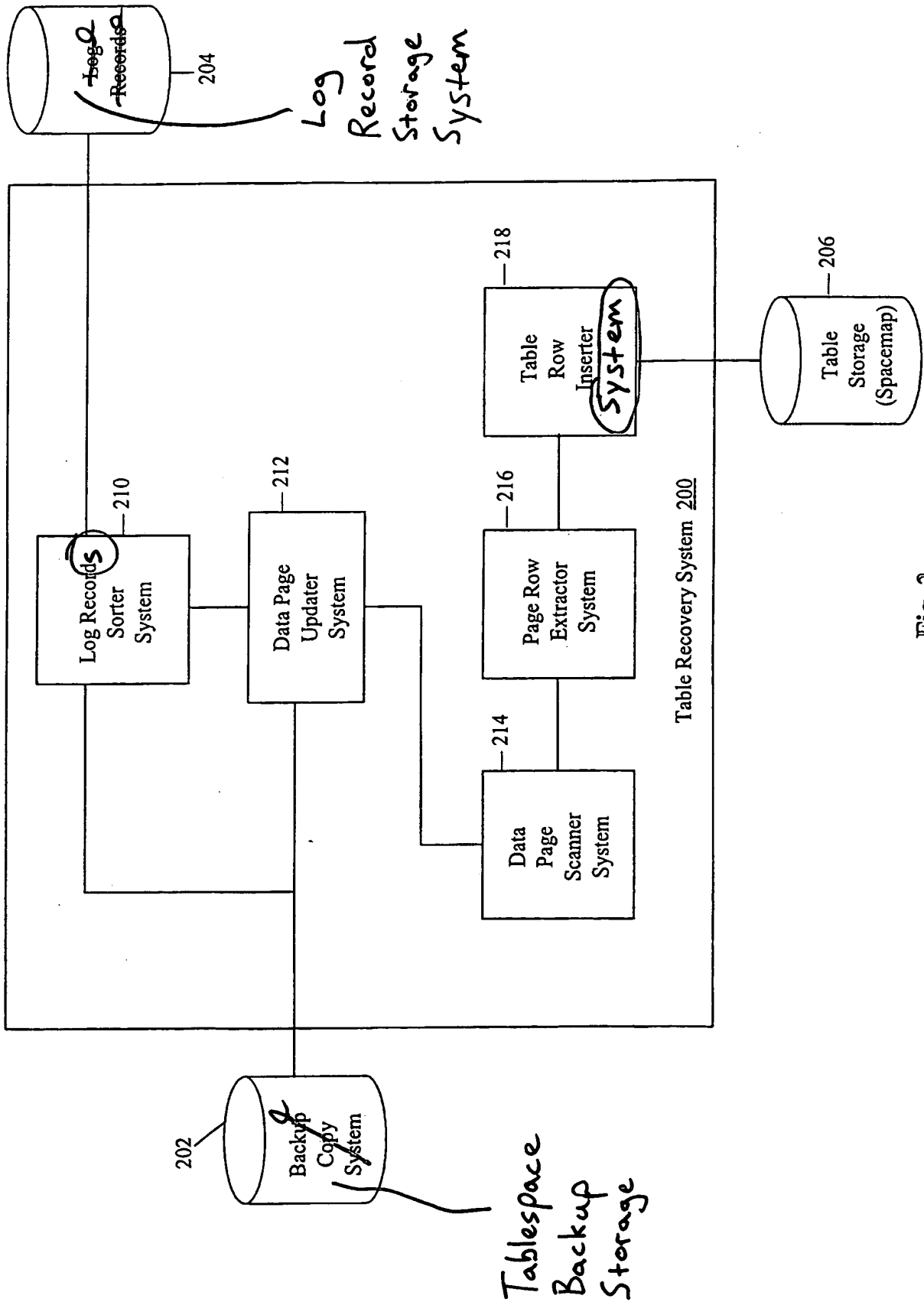


Fig. 2

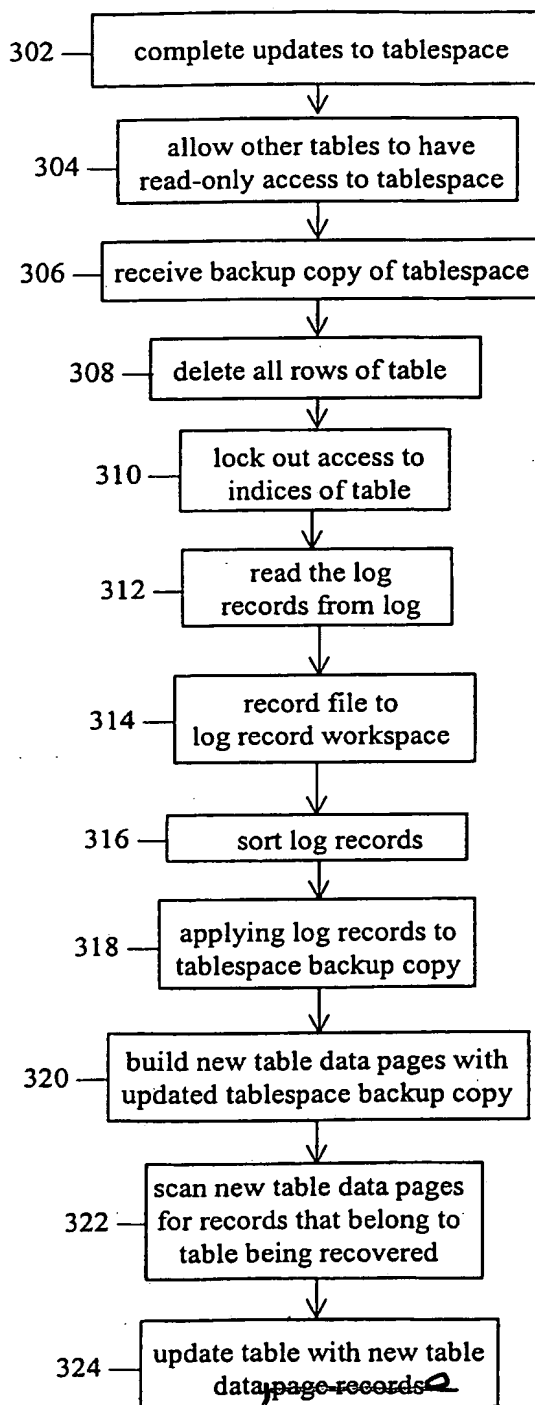


Fig. 3

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